

MEMO

To: Jerry Rosendahl, Director
Terri Smith, Acting Assistant Director
From: Barb Fonkert, MN IFG Grant Coordinating Officer
Date: Feb. 12, 2002

Re: Federal Register: Proposed Rule for Disaster Assistance; Federal Assistance to Individuals and Households

I have read through the document dated January 23, 2002, dealing with the proposed rule for the revisions to the Robert T. Stafford Act brought about by the Disaster Mitigation Act of 2000 for the Individual Assistance programs. FEMA has asked for comments on a number of issues in the proposed rule. I have chosen to comment on the ones where there will be some change required that may or may not benefit future disaster victims in the State of Minnesota. If I have not commented on an issue, it means I am in agreement with FEMA's assessment of the situation or have no major objections.

Please let me know if you have any questions or if things are not clear to you from what I am saying. I am attaching a copy of my printout of the document with my markings for your reference.

I will also be forwarding these comments to FEMA Region V Human Services office for inclusion along with the other Region V states in their comments to FEMA Headquarters. We will be having a conference call on Feb. 14 to go over issues from this document that are in common to all the states. I will keep you informed of significant comments that other states have raised so you may be aware.

Comments (from pg. 3 of 31) Consolidation and Streamlining

FEMA is inviting comment on the tension between the need to consolidate and streamline assistance while at the same time needing to ensure the availability of an active State role in the process.

Much of the discussion surrounding this topic has been gone over by IFG state coordinators at the Region V IA conference this past Spring when the first draft MOU was presented. Basically, the legislation as originally conceived was supposed to have the entire IHP program run by and funded by FEMA. During the legislative process, it was amended to reflect the continuation of a state share of the costs of the "Other Assistance" category (most of the former IFG items of assistance) and the language to indicate that FEMA would be coordinating with the Governor of the state in some areas. What FEMA has now done with this proposed rule is to try to take a system that was designed to operate most efficiently with a single administrator and carve into it a somewhat meaningful role for states. The result is not great in a lot of respects but I really don't see another way short of scrapping everything and starting from scratch which is impossible. This was discussed in great detail at the IA conference this spring.

From our experience with DR1370 where we have agreed to have FEMA process the disaster cases, we have learned what some of the shortcomings will be when the IHP goes into effect. These will come up in other comment areas in the document.

In looking at the "need to consolidate and streamline assistance", the way the system is operated now with the states able to determine awards, receive documents, disburse checks, and process all cases if they desire, is cumbersome to FEMA. Currently, their operators have lists for each disaster trying to detail the differences in items and processing by state and DR number. These can become very confusing as all operators at all processing centers may handle Helpline calls and process cases from all active disasters at any one time. This "virtual processing" mode can only be efficient if it has one "master" or administrator—not two. The clear authority to streamline and consolidate was given to FEMA and they have chosen to enhance and strengthen a computerized database and decision making system that is most efficient when administered and directed by one administrator.

The one role that the State can and has played so well in the past was that of being a client advocate. As a professional social worker, I see very little room for such a role for the State unless it opts to shoulder the entire administration of the "other assistance" section. The major disincentives to performing the administrative role have to do with the cost to the state of staffing not only to do casework but also to operate the Helpline. The 5% of the 75% federal share of grants awarded that is allowed for administrative costs usually is not enough to cover adequate staffing and communications expenses particularly in the smaller disasters that constitute most of the IA disaster declarations in Minnesota. What victims will lose without an active state role is an advocate from the home state who would actually be able to affect change on their behalf.

Comments on pg. 4 of 31 Housing Assistance--general

In describing Disaster Housing Assistance (the part of the IHP program that replaces Temporary Housing and is 100% FEMA funded), I think it's very positive that more than one form of Housing Assistance can be given to an applicant. I also feel that a time limit of 18 months on housing assistance is fair.

Comments on pg. 5 of 31 Housing Assistance—Repair assistance

Housing repair assistance is capped at \$5,000 in the new program by statute. In current disaster programs, FEMA has administratively set repair caps at \$5,000-\$10,000 depending on factors related to the state and the type of disaster. I would not like to see this flexibility taken away.

In our state, particularly for the 1997 floods, the \$10,000 cap made sense as there were so many residences that had damage between \$5,000 and \$10,000 but were not destroyed. Many people who were helped did not have flood insurance (and did not live in a mapped flood hazard area) nor did they qualify for SBA disaster home loans. The higher repair amount was definitely needed.

I also question what happens in the new program when people *do not* qualify for SBA assistance. In the FEMA Housing program, applicants can receive the \$5,000 repair assistance if they do not have insurance coverage and if they qualify for SBA assistance they will get additional money beyond the \$5,000. However, for those who do not qualify for SBA, repairs are limited to \$5,000. In the current program, those who do not qualify for SBA receive Repair assistance from Temporary Housing and then are referred to IFG for further real property assistance up to the maximum grant. Clearly, these people will be out of luck in the new program. In our state, that would have been a significant number of people in DR1175 and DR1333.

I am not in favor of an inflexible cap on repair assistance.

Comments on pg. 7-8 of 31 Flood Insurance

This whole section addresses the concerns of providing flood insurance to clients who live in special flood hazard areas (SFHA) who qualify for replacement or reconstruction of housing and personal property. The requirement to have flood insurance is not what is in question but rather how it will be provided and who will pay for it.

Currently, real and personal property items provided by the IFG program to homeowners and renters in SFHA's were covered by purchase of a Group Flood Insurance policy (GFIP) that lasted for 3 years and was paid for by taking \$200 out of the grant award for a family to pay for it. This ensured that the items

purchased by the grant were covered for 3 years. Recipients are currently instructed that they must maintain the coverage according to NFIP regulations to be eligible for future IFG assistance.

The change proposed is to do away with the GFIP and instead make it the responsibility of the applicant to purchase flood insurance in the amount necessary to cover their award *from their own funds*. This is similar but again different from the practice in the early days of IFG where money was given in the grant award for the recipient to purchase flood insurance. They were supposed to provide IFG with a certificate showing the purchase of flood insurance. That practice had its drawbacks as not everyone took their money and purchased insurance which then had the consequences of more staff time to do the checking up and ultimately recouping awards. The adoption of the GFIP was done to ensure compliance at least for a 3 year period and only required a bare minimum of the grant award for payment.

While I do think it is a healthy practice for applicants to take responsibility for their own recovery, depending on the size of award, the flood insurance requirement for the first year could be quite a burden when families already are having to put out a lot of their own money to cover expenses not covered by government or insurance. In this section, FEMA offers a few other options that I would recommend further exploration for possible adoption. I feel, in the end, it could be more burdensome to the efficiency of the program to do away with GFIP or not have some provision for assisting with the purchase of at least one year's flood insurance. In the end, it is a requirement of the IHP program to know that these awards *are covered* by flood insurance at the time they are issued.

Comments on pg. 9-11 of 31 Paperwork Reduction Act total annual burden

There are several items in the new program that will require applicants or the state to submit documents. This section outlines each of the documents necessary and estimates the number of respondents, frequency of response, and time necessary to develop the documentation. They invite comments on whether the data collection is necessary, if their estimate of the burden is accurate, what recommendations we would have to enhance the clarity of the information to be collected, and the extent to which automated collection techniques may further reduce the burden. Our comments on these items are to be sent to OMB.

I have reviewed the items for submission for the state and they are in line with what would be necessary to ensure proper performance by the state. I have some question on the calculation of number of hours needed to develop the documents but I do not have any better figures to put forward. At this point, I do not feel that we need to submit comments to OMB.

Comments on pg. 14 of 31 Cost savings to the State

FEMA is inviting additional information on what the cost savings would be to state governments and the public with the new consolidated and streamlined program. They state that the provision of housing assistance and assistance for other unmet needs does provide an indirect benefit to local governments as it relieves that burden from their shoulders. At the state level, they expect that the primary benefit of the rule will be a reduction in the cost to the State Government of administering the programs and to the public in obtaining assistance.

I only have a couple of comments here. For our DR1370, we thought we would be reducing the cost of administering when we asked FEMA to do our IFG processing. In reality, we did not have to hire a person to do the work here on a temporary base at a salary of approx. \$11 per hour but the review of cases, awards, and reconciliation of disbursements with awards has almost tripled the time for me to be involved in the program at a senior planner's salary. As a result of my increased involvement, some of my other duties have had to be reassigned to others (most notably some of the Governor's Conference). While we have not had to hire a temporary worker, there are costs involved when priorities of existing staff need to be shifted or put on hold until time is again available. I have no price tag for this but know that we have increased the burden on existing staff by not hiring temporary staff to do the program.

I am not sure that there will be a reduction in cost to the public either as people will still have to submit documentation for certain items and submit appeals. Our experience with FEMA processing DR1370 is that there were more "reconsiderations" filed (% wise) with FEMA than with us when we did our own programs.

Comments on pg. 16 of 31 Federalism

The discussion here centers on the Executive Order 13132 the sets principles and criteria that agencies must adhere to in formulating policies that have federalism implications (regulations that have "substantial direct effects on the States, on the relationship between the national government and the states....", see pg. 16). FEMA says that they have review the rule and determined that it does not have "substantial direct effects on the states" and therefore does not have the type of federalism implications contained in the order. They can "forsee no way that the rule would affect significantly the distribution of power and responsibilities among the various levels of government or limit the policymaking discretion of the states."

They cite a number of meetings where they consulted with state and local representatives in the development of the rule. In all the meetings they cite, not one of them is with the actual people who oversee the IFG programs in the states. From the viewpoint of the groups they met with, they did not see a "substantial

direct effect on the states". Here is where I beg to differ. Currently, the states approve awards based on FEMA criteria and State Administrative plans approved by FEMA. In the new system, in the option most favored by FEMA, the states will not approve awards. Even in the options where the states can review the "manual D" cases, there would only be a certain portion of the total cases where the state would have input on an award. Also, in most administrative options offered, the state will no longer "cut the checks". That in itself has a substantial effect on states. Instead, states will send their 25% share to FEMA who will disburse the checks. Lastly, the states do not retain the authority as an appeal officer. The appeals officer for the "other assistance" part of the program will be from FEMA.

Currently, even if the states opt to have FEMA process cases, states do approve awards, they do cut checks, and they can take on the appeal officer role. I think these changes are significant federalism issues—the authorities for the program have shifted totally to the federal side except in the option that allows for the state to administer the entire "other assistance" part. I am not saying whether this is "good" or "bad". I am saying that there is a significant federalism issue here that is not being addressed. These issues had come up in the discussions with state IFG coordinators at the spring 2001 IA conference at Region V and were not cited in their list of consultations.

The rest of the document

The rest of the document is the actual rule including definitions, subparts, etc. I did get one comment relating to pg. 26 of 31 (C) where it talks about locating FEMA-provided housing units to comply with applicable State and Local codes and ordinances. The Building Codes people had seen that section and may make comments on this particularly as it relates to group sites.

Direct Housing Operations

I have not commented directly on the option afforded the state of taking a role in managing the direct housing operation when FEMA provides mobile homes or travel trailers to individuals as temporary housing. I know from our experience with DR1212 in managing temporary housing that it was, at that time, decided that we would not wish to participate in such an endeavor again. You may want to look this option over in conjunction with the National Guard who did the managerial job before to evaluate once again our previous decision. The references in the document for state participation in this effort are on pg. 30 of 31 and does require the state to submit a plan for doing it (see pg. 10 of 31 under Paperwork Reduction Act/collection of information).

MOU -options

As far as processing options offered in the proposed MOU between FEMA and the State to determine the roles each will play, I see only Option 1 being viable for us. Option 1 is the one where FEMA registers, processes, cuts checks, and does the final paperwork. Any other option where the state would play a more significant role has significant obstacles—even Option 2 where the State would be able to make decisions on “Manual D” cases, the state would then have to operate the Helpline which would most likely require the hiring of a temporary person. The other options where the “State Administers” are totally out of reach for us at this point in time and given our priorities and funding, I do not see them as viable in the future.